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NEW YORK AND THE CONSTITUTIONALITY OF THE ANTI-SCALPER ACT. — A statute which in substantially the same form has remained for forty years on the statute book of New York, and which during that time has received the unqualified support of the courts, has now been held unconstitutional by the Court of Appeals, *People* v. *Warden of City Prison*, New York Law Journal, Nov. 28 and 29, 1898. The statute forbade the sale of passage tickets on any railroad or vessel except by the authorized agents of transportation companies. The applicant was arrested for selling a ticket from New York to Norfolk, Va., without authority from any transportation company. He applied for a writ of *habeas corpus*, claiming the statute was unconstitutional, in that by preventing his engaging in a lawful business — that of ticket broker — it deprived him of his liberty without due process of law. The Supreme Court held unanimously that the law was constitutional; but the Court of Appeals has now reversed this decision by the close vote of four judges to three. This ruling upsets what had been thought the settled policy of the state. It is also in conflict with the decisions in the other states which have similar statutes. *State* v. *Corbett*, 57 Minn., 345. A recent case in Illinois, *People ex rel. Geis et al.* v. *Pease*, reported in Chicago Legal News, Nov. 12, might give it some support, but that decision is only in a circuit court and seems at odds with a decision of the Supreme Court of that state. *Burdick* v. *People*, 149 Ill. 600.

When the court holds that the word "liberty" as used in the fourteenth amendment embraces the right to exercise a trade, they state the established New York rule. But this use of the word seems an extension beyond its legitimate meaning, and in spite of its approval in the case of *Allgeyer* v. *Louisiana*, 165 U. S. 578 — [where the opinion was given by a former New York judge] — the point seems still open to contest in those states which have not committed themselves. Aside from that

matter, however, the holding that the deprivation of this liberty is without due process of law, is more objectionable. For due process of law two elements are necessary: a legal mode of procedure, and a legal purpose. A law which, as in this case, is to be enforced by the courts, and which is passed in due form by the legislature is undoubtedly one mode by which a citizen may be legally deprived of his liberty. Providing a law is passed to promote the health, comfort, safety, or welfare of society, and violates no other provision of the constitution, its purpose is one which will justify such a deprivation. Of course the act must in a fair and reasonable sense advance some of these objects. A causeless arbitrary deprivation will be declared unconstitutional, for it was to prevent exactly this kind of deprivation that the clause was inserted in the amendment.

The court in the principal case admit the law to be as has been stated, and rest their decision on the ground that there is no connection between the act in question and the public welfare. Yet in the dissenting opinions it appears that the act was designed to check certain real evils, — the sale of stolen tickets, counterfeit tickets, or tickets altered in date, destination, or apparent transferability. To this end the act limited the right to sell to persons for whose actions the transportation companies would be responsible. Can it be said the remedy had no connection with the evil? It was also intended to prevent the violation of pooling contracts by the underhand sale of cut rate tickets. Accomplishment of these objects would certainly conduce to the general welfare, and it is hard to agree with the court that the act in no way tends to accomplish them.

THE BREACH OF BLOCKADE. — What acts constitute a breach of a blockade is always a perplexing question. During the late blockade of the Cuban ports the steamship "Newfoundland" was brought to by one of the blockading fleet ten miles to the northeast of Havana, and was formally warned away. Four hours afterward she was captured seventeen miles to the northwest of Havana. She could give no satisfactory account of her presence in the first instance, or of her subsequent delay before the port. Accordingly she was condemned by the district court upon the ground that she was loitering upon the high seas near a blockaded port with intent to enter if opportunity offered, and that this action was a breach of the blockade. *The Newfoundland*, 89 Fed. Rep. 99, 510 (Dist. Ct., S. C.).

The decision of the prize court upon the preliminary question that the *locus* of the breach need not be within the territorial waters of the enemy, though contrary to the opinion of certain continental publicists, is incontrovertible. To render blockade effective the belligerent must be conceded a certain *dominium* over the waters about the place beset. Upon the main question the decision that this loitering constituted a breach of blockade also seems sound. Actual entrance into the port blockaded is indeed not requisite: an overt attempt to pass the cordon is clearly a breach. *The Neptunus*, 2 C. Rob. Adm. 110. But other acts less unequivocal are held breaches of blockade, and within this category falls the principal case. Of these as a class Lord Stowell tentatively advanced the principle that a neutral ship cannot innocently be found in a situation where it may be possible to elude the blockading fleet with impunity; a presumption arises that she is there with intent to break the blockade. *The Neutralitet*, 6 C. Rob. Adm. 30. So, if a ship's course be laid so close to a blockaded